

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOHN A. HUMMEL and HAROLD J. FRABONI

Application No. 09/840,434

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on August 26, 2005. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

On January 8, 2004, appellants filed an Information Disclosure Statement (IDS). It is not clear from the record whether the examiner considered the IDS submitted or whether the examiner notified appellants of why the submission did not meet the criteria set forth in 37 CFR §§ 1.97 and 1.98.

In addition, on December 30, 2004, appellants filed a reply brief in response to the examiner's answer mailed November 3,

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2004. The examiner has improperly responded to the reply brief by writing "Reply Brief Noted" on a duplicate page 1 of the reply brief. Section § 1208.03 of the Manual of Patent Examining Procedure (8th ed., Aug. 2001) states:

[A]ppellant may file a reply brief as a matter of right within 2 months from the mailing date of the examiner's answer. . . . The primary must then either: (A) acknowledge receipt and entry of the reply brief by using form paragraph 12.47 on form PTOL-90; or (B) reopen prosecution to respond to the reply brief. See MPEP § 1208.02.

Accordingly, it is

ORDERED that this application be returned to the examiner for: 1) consideration of the Information Disclosure Statement filed January 8, 2004; 2) appropriate written notification by the examiner to appellants of such consideration; 3) proper response to reply brief filed December 30, 2004; and 4) for such further action as may be appropriate.

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It is important that the Board of Patent Appeals and Interferences be informed promptly of any action affecting the status of this appeal (i.e., abandonment, issue, reopening prosecution).

BOARD OF PATENT APPEALS
AND INTERFERENCES

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DMS/td1